

IN THE MISSOURI COURT OF APPEALS  
SOUTHERN DISTRICT

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APPELLATE NO. SD26390

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IN THE INTEREST OF H.L.L.

T.L., NATURAL FATHER,  
APPELLANT

vs.

STATE OF MISSOURI, GREENE COUNTY JUVENILE OFFICE  
RESPONDENT

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Appeal from the Circuit Court of  
Greene County, Missouri  
Juvenile Division  
Honorable Thomas E. Mountjoy, Judge  
Case Number 103JU0512

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**APPELLANT'S BRIEF**

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## **CERTIFICATE OF SERVICE**

John E. Kelly, the attorney for T.L., Appellant, certifies that, on January \_\_\_\_, 2005, he mailed two (2) copies each of this Appellant's Brief to Respondent's Attorney, William C. Prince, Esq., and to Guardian Ad Litem, Paul Shackelford, Esq., by posting the same to the United States Mail, properly addressed, with postage prepaid.

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## **INDEX**

CERTIFICATE OF SERVICE	2
INDEX	3
JURISDICTIONAL STATEMENT	4
STATEMENT OF FACTS	5
POINTS RELIED ON	10
ARGUMENT	11
CONCLUSION	13
CERTIFICATE OF COMPLIANCE	14
APPENDIX	A1

## **JURISDICTIONAL STATEMENT**

The Juvenile Division of the Circuit Court of Greene County, Missouri, on April 27, 2004, entered its judgment terminating the parental rights of Appellant T.L. in and to the minor child, H.L.L. The issues in this appeal do not fall within the exclusive jurisdiction of the Missouri Supreme Court; this Court has jurisdiction, Article V, Section 3, Constitution of Missouri. Greene County is within the territorial jurisdiction of the Southern District, Section 477.060 Revised Statutes of Missouri.

## **STATEMENT OF FACTS**

The termination of parental rights trial was held on March 22, 2004. As trial began the court noted the appearances. No mention was made of Appellant. Judicial notice was taken of the Juvenile Court underlying neglect file. Juvenile Office Exhibits 1 through 7 were received, being respectively: birth certificate of the minor child, investigative summary dated July 29, 2002, psychological evaluation of Appellant, report from the Besuda Psychological Center, treatment plan that was in effect for Appellant, and treatment plan that was in effect for biological mother (T. 2 - 3).

The Juvenile Office's first witness was Jennifer Collier, the minor child's Children's Division caseworker since 7-29-02. Ms. Collier identified the parents and the child (T. 4 - 5) and stated that her agency had had no contact from the mother since April 2003 (T. 6). She said the mother had not maintained consistent visitation with the child and that in Mr. Princes's words, it was "the belief of the agency that this child has been abandoned by the mother (T. 6). The witness affirmed these words of counsel, "Q. This child has been adjudicated to have been subjected to severe and/or recurring acts of sexual abuse while in the care, custody, and control of the father; is that correct? A. Correct" (T. 6). The questioning continued with, "Q. And the investigative summary and other documents from the Child Advocacy

Center indicate that that sexual contact took place under conditions and circumstances that indicated that the biological father knew or should have known of the commission of that abuse towards the child; is that correct? A. Correct.” (T. 7). The witness continued to testify about the parents’ failure to provide the child with necessities (T. 7) and agreed with counsel’s suggestion “that the alleged biological father is unfit to be a party to the parent and child relationship because of specific conditions directly relating to the parent and child relationship which are of such a duration and nature that render the alleged biological father unable to provide for the ongoing physical, mental, and emotional needs of this child . . . [and] that stems, in large part, from the sexual abuse and this child's current relationship with the alleged biological father” (T. 7 - 8). Ms. Collier testified that Appellant had complied with “aspects” of his treatment plan in that he had maintained contact with his worker, signed all release forms, written letters to his daughter, was in counseling, completed a psychological evaluation, and completed parenting classes (T. 8). The witness said that the relationship between father and child was not a good one in that “the letters can make her act out. That the gifts that he does send her are inappropriate gifts” (T. 8 - 9). She said that both in the state of Missouri and the state of Texas, Appellant had a fairly extensive relationship with Children's Services and had been involved “with a lot of unusual sexual activities,” and had allegedly involved the child in some of them. The witness said Appellant met individuals on the internet and brought

inappropriate individuals around his child, which included attempting to keep the child apprised of his sexual activities (T. 9). Ms. Collier's document described as a recommendation for termination of parental rights was received as Juvenile Office Exhibit 8 (T. 10). The witness went on to testify that this child had no healthy emotional ties or bonds to the mother or the alleged biological father (T. 10 - 11). She said no, the parents had not paid for the cost of the care and maintenance of the child when financially able to do so, including the time that the child was in the custody of the Division of Family Services, and that she was not aware of any services that could be offered to this family that would enable this child to return to the care of the mother or the alleged biological father in an ascertainable period of time (T. 11). The witness answered yes to the proposition that the parents had shown a disinterest in or lack of commitment to the minor child and answered yes to the question was the child was subjected to deliberate acts of sexual abuse, of which the alleged biological father knew or should have known, that subjected the child to a substantial risk of physical or mental harm; is that correct (T. 11). Ms. Collier said the minor child was not in an adoptive placement but was being seen by the appropriate mental health and physical professionals (T. 12). The witness recommended that the parents' parental rights be terminated as being in the best interest of the child (T. 12).

On cross-examination by Mr. Shackelford, the guardian ad litem, Ms. Collier said that the biological mother had made no progress at all on her treatment plan and that Appellant had made very little. She agreed with counsel's proposition that Appellant looked to the child to provide for his emotional needs as opposed to his providing for her emotional needs (T. 13), and also agreed with the proposition that Appellant "lived a rather libertine and chaotic lifestyle" (T. 14). She said no, Appellant had not provided any employment stability records, and yes, the child had been physically, emotionally, and psychologically harmed as a direct result of her father's inappropriate conduct towards her (T. 14).

The Juvenile Office then offered the CASA summary as Exhibit 9, which was received without objection (T. 14 - 15) and then rested its case.

The guardian ad litem, Mr. Shackelford, recommended that parental rights be terminated.

The Court announced that it found from the evidence that the allegations of the petition were true and that it was in the best interest of the minor child that the parental rights of the mother and father (Appellant) be terminated.

After the judgment was entered and within thirty days thereof, Appellant filed a motion for new trial seeking an evidentiary hearing on the issue of lack of notice to Appellant of the trial setting (Legal File 27 - 30), which motion was denied (Legal File 8). Appellant then filed - still within 30 days - a Second Motion For New Trial



incorporating an affidavit from Appellant about lack of notice (Legal File 23 - 26), to which the Juvenile Office responded with a counter-affidavit (Legal File 19 - 22). The motion was overruled (Legal File 8). Appellant's counsel added to the trial court file his own affidavit that mail sent to Appellant's street address was being returned (Legal File 16 - 18).

## **POINTS RELIED ON**

### **I.**

**THE TRIAL COURT ERRED IN TERMINATING THE PARENTAL RIGHTS OF APPELLANT BECAUSE APPELLANT WAS DENIED DUE PROCESS OF LAW IN HAVING RECEIVED NO NOTICE OF THE TRIAL SETTING FROM WHICH THE JUDGMENT TERMINATING APPELLANT'S PARENTAL RIGHTS WAS RENDERED**

**C.S., Jr. v. L.K.M., and the Division of Child Support Enforcement**, 73 S.W.3d 852 (Mo. App. S. D. 2002)

**Grannis v. Ordean**, 234 U.S. 385 [34 S.Ct. 779, 58 L.Ed. 1363]

**Milliken v. Meyer**, 311 U.S. 457 [61 S.Ct. 339, 85 L.Ed. 278]

**Priest v. Las Vegas**, 232 U.S. 604 [34 S.Ct. 443, 58 L.Ed. 751]

**Roller v. Holly**, 176 U.S. 398 [20 S.Ct. 410, 44 L.Ed. 520]

## **ARGUMENT**

### **I.**

#### **THE TRIAL COURT ERRED IN TERMINATING THE PARENTAL RIGHTS OF APPELLANT BECAUSE APPELLANT WAS DENIED DUE PROCESS OF LAW IN HAVING RECEIVED NO NOTICE OF THE TRIAL SETTING FROM WHICH THE JUDGMENT TERMINATING APPELLANT'S PARENTAL RIGHTS WAS RENDERED**

Appellant states under oath that he received no notice of the trial setting on the Juvenile Office's petition to terminate his parental rights (Legal File 26). After the trial but within 30 days, Appellant filed successive motions for new trial, with the Juvenile Office submitting a cross-affidavit concerning Appellant's notice or lack of it as to the March 22, 2004 trial (Legal File 21 - 22). Appellant's counsel also mentioned in the written record that a letter he had sent to Appellant at what appeared to be the same address alleged by the Juvenile Office, was returned undelivered (Legal File 16 - 18).<sup>1</sup>

Appellant was denied notice and an opportunity to be heard and that therefore, the judgment terminating his parental rights is void. An elementary and fundamental

requirement of due process in any proceeding which is to be accorded finality is notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections. **C.S., Jr. v. L.K.M.**, and the Division of Child Support Enforcement, 73 S.W.3d 852 (Mo. App. S. D. 2002), citing **Milliken v. Meyer**, 311 U.S. 457 [61 S.Ct. 339, 85 L.Ed. 278]; **Grannis v. Ordean**, 234 U.S. 385 [34 S.Ct. 779, 58 L.Ed. 1363]; **Priest v. Las Vegas**, 232 U.S. 604 [34 S.Ct. 443, 58 L.Ed. 751]; and **Roller v. Holly**, 176 U.S. 398 [20 S.Ct. 410, 44 L.Ed. 520].

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<sup>1</sup>Counsel must be candid with the Court in pointing out that the Juvenile Office's address of "1609 Spring Street #93" (Legal File 39) differs from counsel's "1609 Spring Street Apt. 93" (Legal File 18) which was returned.

## **CONCLUSION**

Appellant's lack of notice denied him an opportunity to be heard on the allegations against him in the petition to terminate his parental rights. For this reason the judgment against him should be reversed.

Respectfully submitted,

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## **CERTIFICATE OF COMPLIANCE**

The undersigned certifies that the above Brief of Appellant is in compliance with Missouri Supreme Court Rule as follows:

1. The brief includes information required by Rule 55.03.
2. The brief complies with the limitations contained in Rule 84.06(b).
3. The brief contains 1812 words.
4. The brief contains 295 lines of monospaced type.

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John E. Kelly